

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

IN RE	:	
	:	CHAPTER 13
<b>DEBRA R. BENES</b>	:	
	:	CASE # 13-71427
Debtor	:	
<hr style="border-top: 1px dashed black;"/>		
BANK OF BOTETOURT	:	
	:	
Movant	:	
	:	
vs.	:	
	:	
DEBRA R. BENES	:	
2438 HAYMAKERTOWN ROAD	:	
TROUTVILLE, VIRGINIA 24175	:	
	:	
and	:	
	:	
CHRISTOPHER T. MICALE, TRUSTEE	:	
P. O. BOX 1001	:	
ROANOKE, VIRGINIA 24005	:	
	:	
Respondents	:	

TO THE HONORABLE JUDGE OF SAID COURT:

**COMES NOW BANK OF BOTETOURT** (“Bank”), by counsel, and would respectfully represent unto the Court as follows:

1. That Debra Ruth Benes(hereinafter referred to as "Debtor") filed a case under Chapter 13 of the Bankruptcy Code in this Court on September 3, 2013.
2. That, at the time of filing, the Debtor was indebted to the Bank in the amount of \$63,558.78, on a Note dated May 10, 1999, a copy of which is attached hereto and marked “Exhibit A”, which said Note is secured by the lien of a Deed of Trust dated

May 10, 1999, which said Deed of Trust is recorded in the Clerk's Office of the Circuit Court of Botetourt County, Virginia, in Deed Book 569, page 466, wherein real estate known as Lot No. 6, Citadel Acres and 1.845 acres, which said property is commonly known as 2438 Haymakertown Road, Troutville, Virginia 24175, was conveyed in trust to secure the aforementioned indebtedness.

3. The filing by the Debtor on September 3, 2013, stayed a foreclosure sale scheduled for September 4, 2013, at 9:30 a.m. The Debtor had previously filed for protection under Chapter 13 of the Bankruptcy Code in this Court on July 11, 2013, at which time a foreclosure sale was scheduled to be conducted on July 12, 2013, at 10:00 a.m. The Debtor has made no payments to the Bank at any time after either of the above filings.

4. The total indebtedness owed to the Bank includes \$2,211.25 in principal and interest due from April 10, 2013, to August 10, 2013; late charges in the amount of \$695.97; attorney's fees and the cost of recording the Deed of Substitution for the foreclosures in the amount of \$2,021.00; advertising expenses for advertising both foreclosures once a week for four weeks in the amount of \$2,580.00; a broker's price opinion fee in the amount of \$65.00 and force placed insurance in the amount of \$1,553.00.

5. At the Creditor's Meeting on October 8, 2013, the Debtor testified she had insurance on the property and identified the agent through whom she had the insurance. Contact with the agent after the Creditor's Meeting revealed that, at one time, she had had

insurance through that agent, however, that insurance was canceled in 2009. Contact was made with the attorney for the Debtor on October 8, 2013, regarding the above, however, at the time of the filing of this Motion for Relief the Bank has not been advised that the Debtor has any insurance on the property.

6. The Debtor's Chapter 13 Plan dated August 30, 2013, provides that the debt due to the Bank will be paid pursuant to the Contract without Modification, with the arrearages to be paid by the Trustee. The first payment which came due after the Debtor filed in this Court came due on September 10, 2013. When asked at the Creditor's Meeting why she had not made that payment, the Debtor responded that she would make that payment within the next few days. Since the Creditor's Meeting, another payment came due on October 10, 2013, and has not yet been paid. Accordingly, the Debtor is \$1,009.66 delinquent in post-petition payments. The Treasurer of Botetourt County, Virginia advises that real estate taxes on the hereinabove described property are delinquent for the years 2007-2012 in the amount of \$3,567.39 as of July 31, 2013.

7. The Botetourt County tax assessed value of the hereinabove described real estate is \$128,900.00, however, the Bank does not believe that the property is worth any more than the total amount owed, the aforementioned delinquent real estate taxes and the costs which will be incurred to go through another foreclosure proceeding and, therefore, alleges that there is no equity in the property and that it cannot be adequately protected without Relief from the Stay imposed by Section 362 of the Bankruptcy Code to institute all action necessary to foreclose the lien of its Deed of Trust on property located at 2438

Haymakertown Road, Troutville, Virginia 24175, known as Lot 6, Citadel Acres and 1.845 acres and identified as Botetourt County Tax Map #71A(2) 6 & 71-23C.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on **NOVEMBER 12, 2013, AT 9:30 A.M.**, or as soon thereafter as Counsel may be heard, a hearing on the attached

**MOTION FOR RELIEF FROM STAY**

will be held in the U. S. Bankruptcy Court, Commonwealth of Virginia Building, 210 Church Avenue, 2<sup>nd</sup> Floor, Room 212, Roanoke, Virginia 24011.

**All documents regarding this matter must be identified by both the bankruptcy case number and the Motion number.**

**BANK OF BOTETOURT**

BY: /s/ John R. Patterson  
Counsel

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Counsel for Bank of Botetourt

**CERTIFICATE**

I hereby certify that on the **21<sup>ST</sup>** day of **OCTOBER, 2013**, the Court electronically noticed a true and correct copy of the foregoing Motion for Relief from the Stay and Notice of Hearing to Margaret C. Valois, Esquire, Counsel for the Debtor; to Christopher T. Micale, Trustee, and John R. Patterson mailed a true and correct copy of the foregoing Motion for Relief from the Stay and Notice of Hearing to Debra R. Benes,

2438 Haymakertown Road, Troutville, Virginia 24175.

/s/ John R. Patterson

**JOHN R. PATTERSON**